



TO WHAT EXTENT DOES THE RIGHT TO INFORMATION LIMIT GOVERNANCE?

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INTRODUCTION

"Information is the currency of democracy." Today, at least 125 countries have implemented a Right to Information (RTI) law, also known as the Freedom of Information (FOI) Act (United Nations Educational, Scientific, and Cultural Organization [UNESCO], 2019). According to the Indian RTI Act (2005), the right to information is "the right to information held by or under the control of any public authority." It is an established legal framework based on the rule of law to protect human rights, secure social justice, and guard against exploitation and abuse of power. At its core, the right to information is the foundation of a well-functioning democracy and a fundamental human right. Governance is "the act or process of governing or overseeing the control and direction of something, such as a country or an organisation" (Merriam-Webster, n.d.). While RTI laws can increase transparency in government institutions, they can also decrease the quality of governance. In the information age, knowledge is power, and the free flow of information determines the pace of development and well-being of the people. Thus, this leads us to the question: to what extent does the right to information limit governance? Through desk research and a comparative analysis of arguments from various research papers, articles, and books available on the internet, I hope to discuss the extent of and answer the question of this increasingly prevalent topic.

Firstly, implementing RTI laws will force governments to be more transparent in their activities, reducing perceptions of public sector corruption. The United Nations Office on Drugs and Crime [UNODC] (n.d.) said that "transparency allows detection and reduces the likelihood of corrupt behaviour because it lowers the information barrier, allowing for scrutiny and monitoring." (para. 1) RTI laws complement other anti-corruption laws, decreasing public sector corruption perceptions in some nations. For example, Indonesia's RTI law, the law of the Disclosure of Public Information (Law No. 14/2008), complements other anti-corruption laws in the country, including Law No. 20/2001 on the Eradication of Corruption, Law No. 30/2002 on the Corruption Eradication Commission, and Law No. 15/2002 on Money Laundering. (Sudibyo, 2011). However, due to the broad definition and classification of state secrecy in the Indonesian RTI law, the law allows the classification of information on broader lines than the recommended standard. Therefore, to complement anti-corruption laws effectively, the law in Indonesia should have limited the scope of state secrecy and given more specific provisions on what could be classified as state secrets. Nevertheless, the law is a step forward in promoting greater transparency in the country's governmental institutions. In India, the 2005 implementation of the Indian RTI Act has lowered perceptions of corruption, as shown when comparing data from Transparency International's annual Corruption Perception Index (CPI). The CPI is an effective and credible way to measure perceptions of public-sector corruption in nations as it uses multiple data sets from reputable sources, including the World

Bank and the World Economic Forum. The score is calculated based on a combination of "at least 3 data sources drawn from 13 different corruption surveys and assessments." (Transparency International, 2021). The CPI assesses the degree to which corruption is perceived to exist among public officials and politicians, and during the years concerned (2004 and 2006), gave countries a score on a scale of 0-10, with 0 being the most corrupt and 10 being the 'cleanest.' In 2004, one year before the RTI Act was passed, India received a CPI score of 2.8/10. In 2006, one year after the RTI Act was passed, that score improved to 3.3/10. The improvement in score shows that after the RTI Act, there was less perceived public-sector corruption in India. All these support the argument that RTI laws decrease perceptions of corruption and increase transparency in governmental institutions.

However, implementing RTI laws does not automatically decrease perceptions of corruption. A study by Costa (2013) uses the introduction of FOI/RTI laws in several nations as an experiment to determine their effect on corruption perceptions and the quality of governance. Using different corruption perception indices, both at the macro- and micro-level, she finds that "several countries that adopted FOI laws saw an increase in perceived corruption and a decrease in the quality of governance, rather than the expected improvement." (p. 2). This shows that RTI laws can sometimes be ineffective and can have adverse effects that decrease the quality of governance. This paper was published in the Oxford University Press's Journal of Law, Economics, & Organisation, a renowned journal, meaning that it likely went through extensive peer review and fact-checking before being published, strengthening the credibility of both the data and argument. However, this paper was published in 2013 and uses mainly quantitative data, meaning that the data sets produced in the paper might not be up-to-date.

Yang (2005), who observed a customs reform in the Philippines in 2004, found that the increase in transparency did not stop tariff avoidance. Instead, he found that increased transparency resulted in a shift towards alternative methods of corruption, which shows that RTI laws are only sometimes effective in decreasing corruption. Yang is a Professor at the Department of Economics and the Ford School of Public Policy at the University of Michigan received his undergraduate and Ph.D. degrees in economics from Harvard University. His work spans a range of microeconomic topics, meaning that this is in his specialised field, which adds credence to his research. However, both the field research and the paper were done in the early 2000s, and the specific results of the findings might not be up-to-date. Despite this, his findings can still be used today as a relevant argument as to why RTI laws cause a decrease in the quality of governance, in that enforcement ultimately can lead to alternative methods of corruption despite its intent to do the opposite.

Nevertheless, forcing the government to be more transparent

through implementing RTI laws encourages good governance and supports the freedom of the press and the fundamental human right to information. The current Secretary-General of the United Nations, António Guterres (2019), said that a free press is “the cornerstone for building fair and impartial institutions, holding leaders accountable and speaking truth to power.” From a human rights perspective, good governance refers to the process in which public institutions “conduct public affairs, manage public resources and guarantee the realisation of human rights.” According to the Office of the United Nations High Commissioner for Human Rights [OHCHR] (n.d.), critical attributes of good governance are transparency, responsibility, accountability, participation, and responsiveness. Countries practise good governance by promoting the freedom of the press by using the RTI law to complement other laws supporting the freedom of the press. For example, in the United States, the freedom of speech and the press are both protected in the US constitution, as “the First Amendment protects freedom of speech, the press...” (The White House, n.d.) This is critical to a democracy in which the government is accountable to the people. Former US Supreme Court Justice Hugo Black agrees, saying that ‘the press was to serve the governed, not the governors.’ Countries must protect the freedom of the press to ensure that it is easier for citizens to be able to obtain information regarding the activities of the government. The right to information is a human right, so freedom of the press is essential. The United Nations Universal Declaration of Human Rights (1948) mentions this in Article 19, which states that “the fundamental right of freedom of expression encompasses the freedom to seek, receive and impart information and ideas through any media and regardless of frontiers.” (United Nations, n.d.) Thus, RTI laws are essential in protecting that human right and encouraging good governance.

Because some countries have overly broad scopes of what is classified as “state secrets,” and some governments directly undermine their own RTI laws, it can also contribute to the argument that RTI laws decrease the quality of governance. As quoted in Sudibyo (2011), 48 out of 56 countries in the Organisation for Security and Co-operation in Europe (OSCE) had defined “state secrecy” in an overly broad and inconsistent manner. However, this is happening in all regions of the world, not just in Europe. The unclear scopes of government secrets can lead to over-classifying state secrets and undermine the public's right to know. For example, Japan's Specially Designated Secrets (SDS) Act of 2013 gave the government, including no longer existing government agencies, the right “to classify nearly anything as a secret and intimidate the press into silence” (Adelstein & Stucky, 2017). Furthermore, with no oversight process to check on ministries and government agencies, they can designate large amounts of information as “secret” for inconsistent or even self-interested reasons. This article was published in The Daily Beast, an American news website. However, since the authors are journalists, the article may be biased. Despite this, they use quotes from those in the Japanese government who agree with their sentiments, like Upper House Councillor Taro Yamamoto, who said, “The path that Japan is taking is the recreation of a fascist state. I strongly believe that this secrecy bill represents a planned coup d'état by a group of politicians and bureaucrats.” While this law was intended to protect national security, it has become like an attempt to limit the free press, undermining the fundamental human right to information.

Another example is the United Kingdom, where the government previously undermined its Freedom of Information (FOI) Act. They used stonewalling tactics, making requesters stuck as they

could not file an appeal without an outright refusal. In the last five years, the Cabinet Office, Treasury, Foreign Office, and Home Office have all withheld more requests than they granted. (Corderoy, 2020) However, in September 2022, the Department for International Trade was hit with an enforcement notice by the Information Commissioner's Office (ICO) over its “persistent failures” in handling FOI requests. (ICO, 2022) Though the ICO is taking its first steps towards action, it showed the severity of how badly the different departments of the UK government were handling FOI requests and deliberately undermining their law. All these examples support the argument that RTI laws decrease the quality of governance, despite its initial intent to do the opposite.

In conclusion, RTI laws limit governance by decreasing its quality despite their intent to encourage more transparency because most RTI laws have overly broad scopes, leading to the over-classification of state secrets. Though it can be argued that RTI laws decrease perceptions of corruption, the fact is that this is not always the case - it can lead to a shift towards alternative methods of corruption (Yang, 2005). Intended to provide more transparency and accountability, and in some cases, is successful, RTI laws have become problematic despite their intent to do good. However, further research may be required, for example, on researching the individual RTI laws of more countries in more regions of the world. Additionally, deeper research into corruption statistics (i.e., the number of corruption cases made public in years before and after an RTI law was passed) can be done to further compare whether RTI laws are effective. Before this, I had a generally favourable view of RTI laws, as I did not have too strong of background knowledge and assumed they effectively promoted higher transparency in government institutions. However, during my research, I realised that was not always the case. The fact that RTI laws could be easily exploited or manipulated makes it more difficult for me to believe that governments want to fully allow us the right to information. My research has made me realise that not all RTI laws are good, and they can decrease the quality of governance.

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